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DEC 15 2009

Hershkovitz & Associates, LLC
2845 Duke Street
Alexandria, VA 22314

In re Application of
Claudio R. Ballard
Application No. 09/454,492
Filed: December 6, 1999
For: REMOTE IMAGE CAPTURE WITH CENTRALIZED
PROCESSING AND STORAGE

DECISION ON THE PETITION
REQUESTING WITHDRAWAL
OF FINALITY

Applicant's petition under 37 CFR 1.181, filed September 15, 2009, requests withdrawal of the finality of the Final office action mailed July 15, 2009.

The petition is DISMISSED as MOOT.

A review of the file reveals that a Restriction Requirement was mailed January 14, 2009. A response to the above-noted restriction was never received. It is noted that on July 14, 2009 the applicant filed a "Communication to the Office" which included attached copies of e-mail communications between the applicant and the examiner. It is also noted that there does not appear to be any written authorization from the applicant in the file that authorizes the examiner to engage in internet communications with the applicant. Without such an authorization, no internet communications between the applicant and the Office should take place. MPEP 502.03. In the Communication to the Office, the applicant indicates that "...written correspondence was received by the applicant from the Office which stated that the Office action mailed January 14, 2009 was withdrawn." It is unclear if the written correspondence referred to in this statement is meant to be the attached e-mails or not. One of the above-noted e-mails from the examiner does indicate that "the previous action will be vacated and an Office action will follow", however, this is insufficient to toll an outstanding response period. Initially, this e-mail is not an indication that the action of January 14, 2009 has been vacated, only that it is intended that it will be. Further, the examiner does not have the authority to vacate an action or to stop a period for response from running, absent the mailing of a new Office action **prior** to the expiration of the statutory period. The authority to vacate an Office action is reserved for the Director of the USPTO, and those that have been delegated that authority as per MPEP 1000. Thus, even if the examiner had clearly indicated that a previously mailed Office action was vacated, without the timely mailing of a new Office action prior to the expiration of the response period, the response period continues to run. In this case, the new Office action from the examiner unfortunately did not get mailed until July 15, 2009, one day after the period for response expired. Since the application became abandoned on July 15, 2009, and since a new Office action

cannot be properly issued on an abandoned case, the Final rejection of July 15, 2009 is hereby decided *sua sponte* to be **VACATED**. Applicant's response filed October 9, 2009 is likewise **VACATED**. Because the vacated action, upon which the above-noted petition is filed, no longer exists, the petition to withdraw the finality of the July 15, 2009 Office action is **DISMISSED as MOOT**.

The application currently stands abandoned.

Any questions or comments with respect to the decision should be forwarded to Quality Assurance Specialist, Steven Meyers at (571) 272-6611.



Wynn Coggins, Director
Patent Technology Center 3600
(571) 272-5350

Snm/wc: 12/13/09

